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No. 705

In The Supreme Court of The United States

October Term, 1963

JOHN WILLIAM WHALEY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S ANSWER TO RESPONDENT'S MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO THE GRANTING OF A PETITION FOR WRIT OF CERTIORARI

JOHN WILLIAM WHALEY
In Propria Persona
2420 University Avenue
San Diego, California

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I

The only Government evidence introduced which in any way related to the fact that petitioner represented himself to be a member of the Federal Bureau of Investigation, was the fact that he allegedly presented a card bearing the name Federal Bureau of Investigation. However, the evidence shows that apparently this fact was never even deemed material by the investigating officers

for the Government, as Petitioner was never asked whether or not he presented such a card, or even had such a card. (RT 67). Also, the Government investigators, without notice to Petitioner and with his consent, searched his office and found no such cards. However, they did find cards bearing the name National Bureau of Investigation, which was the name of Petitioner's employer, which name had been registered in the State of California and was lawfully used.

Secondly, the additional "prior acts" that the Government introduced was one dealing with an alleged representation that Petitioner was a member of the National City Police Department. This matter had been reviewed by the local Police Department and was dropped because there was no basis for belief that such statement was made; and, secondly, a witness on behalf of Petitioner who was present at that time was a member of the Sheriff's Department of the County of San Diego, who stated that no such statement was made. Thirdly, the Prosecution witness who testified to this fact has subsequently been indicted and convicted of defrauding citizens of the State of California, and also who has been indicted by the Federal Government for counterfeiting money. This individual is an irresponsible and perjurious individual and was used by the Government for purposes of [illegible]nging in this evidence.

II

In reviewing the instructions given by the Court, the Court had given various examples for purposes of explaining to the jury what is meant by false pretenses. Petitioner's attorney, after the jury had left for deliberation, discussed the matter with the Court and the

Court then recalled the jury to explain the situation further. There was nothing else that Petitioner's attorney could do, and it is felt by Petitioner that the instructions as given by His Honor Judge MATHIAS were not correct and accurate statements of the law.

III

Petitioner now desires to argue a point which Petitioner's attorney did not do at the Circuit Court of Appeals level, and that is, that at the time of the motion for a new trial, Petitioner's attorney presented evidence to the effect that a discussion had taken place between two jurors in the hallway stating that they were friendly with the District Attorney of San Diego County, and were discussing the herein case in an extremely biased and prejudicial manner. This evidence was presented to the Court at the time of the motion for a new trial (for the purpose of impeaching the jurors) wherein the Court coerced Petitioner's counsel to withdraw the argument re bias and prejudice of the jurors, because the Judge stated that if Petitioner's attorney wanted to press this issue, he would immediately incarcerate Petitioner in jail and continue the hearing of the motion for a few weeks. For the purpose of avoiding this immediate incarceration, Petitioner's attorney withdrew his argument. Petitioner now contends that such coercive measure of the Court deprived him of having the matter fully heard, and that to use jail and incarceration as a means of having a matter heard was unjust, and a deprivation of his rights. Further, Petitioner contends in all honesty that this type of conduct was manifest through the entire trial, although the record does not show the same. Petitioner is requesting of

the Court Reporter to have the transcript made and prepared re motion for a new trial, to show the Supreme Court what had actually taken place.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be granted and that Petitioner be given a "fair, just, and full" hearing in this matter.

JOHN WILLIAM WHALEY
In Propria Persona